

ORDINANCE NO. 2282

AN ORDINANCE ADOPTING BEND CODE SECTION 3.30.040 VEGETATION, AMENDING BEND CODE CHAPTERS 3.40 RIGHT-OF-WAY PERMITS AND 3.50 REVOCABLE RIGHT-OF-WAY PERMITS RELATED TO USE OF PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF BEND

Findings

- A. One impact on the condition of City streets is excavation and resurfacing for the placement of underground facilities. Appropriate standards for excavation and resurfacing will help preserve the condition of streets.
- B. Existing code provisions relating to permits for work in or use of City-administered rights-of-way could be improved by providing clearer and more detailed provisions regarding the issuance of permits and the responsibilities of permittees.
- C. Existing code provisions relating to sidewalks could be improved by clarifying the responsibility of adjacent property owners to trim vegetation so that it does not intrude into the sidewalk.

Based on these findings, **THE CITY OF BEND ORDAINS AS FOLLOWS:**

- Section 1: Bend Code Chapter 3.30 is amended by adding a new Section 3.30.040 to read as follows:

3.30.040 Vegetation

Property owners shall trim vegetation on their property so that it does not extend into the area above any public sidewalk from the surface of the sidewalk to a point 8 feet above the sidewalk level.

- Section 2: Bend Code Chapter 3.40 Right-of-Way Permits is amended to read as shown on Exhibit A.

- Section 3: Bend Code Chapter 3.50 Revocable Right-of-Way Permits is amended to read as shown on Exhibit B.

- Section 4: Bend Code Chapter 3.60 Trees on City Property and Public Rights-of-Way is amended by adding a new Section 3.60.075 to read as follows:

3.60.075 City Action

While trees are an important amenity in rights-of-way and on other City property, transportation and other public needs may require removal or trimming of trees by the City. The City's decision on removal or trimming of trees by the City on City property, and the City's actions in removing or trimming trees on City property and other City actions near trees shall


be final and not subject to Sections 3.60.060, 3.60.080 or
3.60.090

First Reading: November 16th, 2016

Second Reading and Adoption by Roll Call Vote: December 7th, 2016

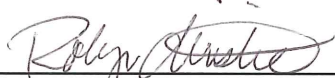
Yes: Jim Clinton, Mayor
Victor Chudowsky
Doug Knight
Sally Russell
Nathan Boddie
Casey Roats
Barb Campbell

No: NONE



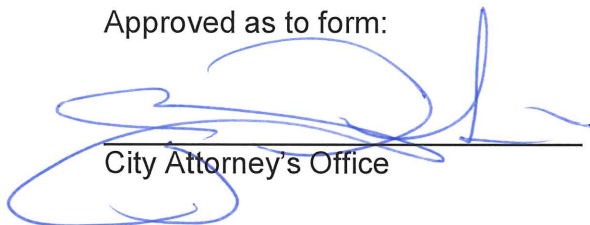
Jim Clinton, Mayor

ATTEST:



Robyn Christie, City Recorder

Approved as to form:



City Attorney's Office

EXHIBIT A

Chapter 3.40 RIGHT-OF-WAY PERMITS

3.40.005 Permit Requirement.

A. No person other than the City and its agents may dig, cut, drill (vertical, horizontal, directional, or other), excavate (mechanical, hydro- or other), install, or construct anything within any right-of-way or property owned or controlled by the City, including public easements, without a City right-of-way permit. No person other than the City may remove, alter, or construct any curb, sidewalk, driveway approach, gutter, pavement, or other improvement in any public right-of-way or property owned or controlled by the City without a City right-of-way permit. No person other than the City may wholly or partially reserve, occupy, or close a sidewalk, vehicle lane, or bike lane in a City-administered right-of-way without a right-of-way permit. A traffic control plan consistent with the City of Bend Standards and Specifications must be submitted with any application for a right-of-way permit that will include a lane closure.

B. A right-of-way permit may be issued if the proposed improvement complies with this Code, the Standards and Specifications, the Bend Development Code, and if the applicant is in compliance with all outstanding right-of-way permits. The City may deny an application for a right-of-way permit or impose conditions of approval to ensure compliance with applicable laws and regulations or to preserve infrastructure. Conditions may include, but are not limited to, restoration of surfaces, timing of the work to be performed, utility coordination, and traffic control requirements. The conditions relating to timing may include specific penalties for failure to comply. The right-of-way permit shall specify the extent of any permitted lane closure.

3.40.010 Applications.

A. Right-of-way permit applications must be submitted on City forms.

B. The application shall include the applicant's name and address, the date the work is to start, the date the work is to be completed, the location of the work, the nature of the street involved, the purpose of the work, the size and nature of the work, including construction plans, and other information required on the application form. Only utility franchisees and contractors on the City's list of qualified contractors for work in the right-of-way may submit permit applications. All franchisees and private development work must use City-qualified contractors for any work performed within the rights-of-way. The permit application shall indicate if work is to be performed between the hours of 10:00 p.m. and 7:00 a.m. If work is to be performed within those hours, the applicant must also apply for a noise permit under Bend Code Section 5.50.035. The City reserves the right to limit or change all working hours to avoid conflict with other work or activities. Permission for night work must be requested at the time of application.

C. The City may require the applicant to provide a performance bond or equivalent security in an amount sufficient to protect and ensure completion of the work and restoration of the right-of-way.

D. The application shall be accompanied by the permit fee in the amount established by Council resolution unless prohibited by a franchise ordinance or agreement or state law. The resolution establishing the permit fee may establish different fees for different categories, types, or tiers of right-of-way permits. The permit fee shall be set at an amount sufficient to cover cost of reviewing, issuing, and administering the permit application and performing inspections. If additional costs are occurred as a result of multiple inspections or engineering reviews, the City reserves the right to charge the applicant for these additional costs.

E. The applicant and its contractor/subcontractors must provide a certificate of insurance showing liability insurance with policy limits at least equal to the City's tort liability limits. The certificate of insurance must list the City as an additional insured.

F. The applicant must agree to indemnify the City as to liability of any kind resulting from or in connection with the permitted activities. The permittee is responsible for injury to any person or property resulting from the permitted excavation, construction, or related work.

G. The City may require an applicant to submit plans prepared by a licensed professional engineer for large or complex projects or those that may have an effect on other work, utilities, or the City's infrastructure and transportation system.

3.40.015 Permitted Work.

The City may issue the permit if a complete application is received and the work will comply with all applicable laws and regulations, including the Standards and Specifications. All permits shall include an expiration date. The City may deny a permit if the application does not demonstrate compliance with this Chapter or if the applicant is not compliant with any previously issued City permit or has failed to pay a civil penalty imposed relating to a previously issued City permit. The permit may contain conditions or restrictions, including but not limited to the following:

A. Requiring that access to fire hydrants be available at all times.

B. Requiring that the actual work be confined to the hours of specific hours (typically 7:00 a.m. to 9:00 p.m.) or to certain days.

C. Setting forth the maximum length of breaks or excavation to be open at any one time.

D. Requiring that access to driveways be maintained.

E. Requiring that the permittee reimburse the City for the cost of relocating or reestablishing City monuments and the giving of notice where the work will interfere with monuments.

F. Requiring that provision be made for traffic operations and safety, including an engineered traffic control plan that includes specific detour routes, work zone limits, coordination with other right-of-way work or special events in the area of the work, and requiring the use of traffic control barricades.

G. Relating to the care and disposition of excavated material during construction.

H. Making provision for watercourses during excavation.

I. Setting forth minimum and/or maximum depths of excavation or structures.

J. Providing for control of noise, dust, and debris during excavation.

K. Requiring proper backfill and pavement resurfacing, including temporary surfacing if necessary, consistent with the Standards and Specifications, and imposing timelines for replacing temporary surfacing with permanent surfacing.

L. Providing timelines or deadlines for conducting the work and establishing penalties for non-compliance.

O. Requiring erosion control and "Best Management Practices" be used on all sites and to require that all work be completed in accordance with applicable local, state and federal requirements for erosion control and stormwater management.

3.40.020 Conduct of Work.

A. Work under the permit shall be done in conformity with this Code, the Standards and Specifications, the permit, and all applicable laws. Permittee shall give the City a minimum of 48 hours' notice prior to starting any work and requesting any required inspections. No excavation may be done under any permit unless the permittee has complied with all requirements for locating existing underground facilities in the area to be excavated. For purposes of this section, excavation includes drilling and directional drilling. The work shall be performed without delay. All work must be performed by contractors who are on the City's list of qualified contractors. The work shall not interfere with access to fire hydrants or with City or public utilities.

B. An Immediate patch must be placed within 48 hours of completion of the work, any excavation shall be filled, compacted, and the street surface restored to as good or better condition than before the work and in conformity with City standards. Final pavement restoration will be completed within 30 days. For work on arterial and collector roadways, additional conditions may be placed on the permit requiring interim paving restoration prior to the entire scope of work being completed.

C. Cold-mix asphalt patching will only be allowed as a temporary measure during adverse weather conditions and the permanent patching shall be placed as soon as weather permits. During periods of the year when hot asphalt material is not available, the contractor shall submit a Material Exception form for approval and shall perform the final paving restoration as soon reasonably possible when the material becomes available and no later than June 15th of each year.

E. Traffic signs or signals, or other signs shall be returned to their prior location and condition, unless otherwise directed. If any traffic signs are required to be removed and reinstalled, or relocated, they should be brought up to current Standards and Specifications.

F. Work performed under a right-of-way permit may be performed only by contractors on the City's list of qualified contractors. The City, at its discretion and upon review of required qualifications, place a contractor on the list of qualified contractors if the contractor provides information that the contractor is responsible and has sufficient experience, knowledge, skill and resources to properly perform work in rights-of-way. The list may specify specific types of work that the contractor is qualified to do. The City may deny a request to be placed on the list or remove a contractor from the list if the City determines that the contractor lacks the necessary experience, knowledge, skill, or resources to properly perform work in rights-of-way or if the contractor has a history of poor performance. Poor performance includes, but is not limited to: delays or lateness in work, poor quality work, failure of work to last through warranty periods, lack of proper project management, or other defects in performance.

3.40.025 Inspection, Maintenance and Warranty Security.

The permittee shall notify the City within 48 hours after completion of the work. Additional reporting and inspections may be required depending on the scope of work. The required reporting and inspections shall be identified at the time of permit issuance. The City, at their discretion, will inspect the work and require correction of any deficiencies. If no deficiencies are detected the City will accept the work. The permittee shall be required to maintain the area in good condition for a period of one year from acceptance. Upon request by the City, the permittee shall provide security in a form acceptable to the City to cover any defects discovered in that one-year period.

3.40.030 Compliance.

The City may revoke a permit and issue a stop work order if the permittee fails to comply with the permit or any City Codes or regulations. All permits shall be deemed to contain a provision that the work must be consistent with the approved application and plans. The permittee must have the approved permit onsite at all times while construction is underway.

3.40.035 Traffic Control Barricades.

The permittee shall provide temporary traffic control barricades in compliance with the Standards and Specifications and the MUTCD, as required to protect from risks associated with obstructions or excavations.

3.40.040 Utilities.

Before starting work, the permittee shall provide written notice to all public utilities that have or may have facilities in the affected area. If the work includes the placement of utility lines and facilities, the permittee will provide "as-built" drawings to the City. The permittee is responsible for coordinating and paying for all utility relocations affected by the permit.

3.40.045 Emergencies.

Excavations in rights-of-way may proceed in case of an emergency. The permit must be applied no later than the close of the next business day. Depending on the severity of the emergency the City may extend this timeline on a case by case basis.

3.40.050 Coordination of Construction.

A. All permittees will make every effort to coordinate their construction schedules with those of the City and other users of the rights-of-way. The City Engineer will resolve conflicts and determine priorities for any permitted work in the Right-of-Way. City project take precedence.

B. Unless otherwise agreed to in writing by the City at least 60 days prior to the start of work in a right-of-way that includes a cut or opening in the street of one block or 400 linear feet, whichever is less, the person intending to perform the work shall provide notice to the City and all other utilities identified by the City as utilities that are franchised or permitted to place facilities within the project area. The notice shall comply with the following:

1. The notice must be provided in a manner which documents receipt of notice by utilities.
2. The notice shall state the anticipated location, project schedule, and general description of the proposed work.
3. No permits for work shall be issued until notice has been given.

C. All utilities performing work in the rights-of-way subject to the notice requirement set forth in paragraph B of this section will make every effort to cooperate with other utilities with permits to do work in the same location at or near the same time to coordinate construction and co-locate facilities.

D. Nothing in this section shall require a utility to reveal proprietary information. A utility shall signify any proprietary information as such and the City will protect such information from disclosure to the extent allowed by law.

E. The notification requirement set forth in paragraph B of this section shall not be required for the installation of facilities in new developments that are being processed through the private development review process.

3.40.060 As-Built Drawings.

Upon request by the City, a permittee will provide City with an electronic set of engineered plans in a form acceptable to the City showing the location of the facilities the permittee installed or constructed within the rights-of-way pursuant to the permit.

3.40.070 Restoration of Rights-of-Way and City Property.

A. When a permittee does any work in or affecting any right-of-way or City property, it shall, at its own expense, promptly remove any obstructions and restore the right-of-way or property as required by the Standards and Specifications.

B. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected right-of-way or property. Temporary restoration shall be at permittee's expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. If the permittee fails to restore right-of-way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time, not exceeding 30 days, to restore the right-of-way or property. If the permittee fails to restore the right-of-way or property to as good a condition as existed before the work was undertaken within the notice period, the City shall cause the restoration to be made at the expense of the permittee.

3.40.080 Right-of-Way Preservation and Restoration Policy

The City's policy is to limit cuts in newly reconstructed or paved streets. All cuts in paved streets shall be conducted in accordance with the Standards and Specifications, which may include standards based on the Pavement Condition Index or date of most recent reconstruction or repaving.

3.40.090 Regulations

The City Manager may adopt regulations implementing any or all provisions of this Chapter.

3.40.100 Enforcement

Failure to comply with any provision of this Chapter or a permit issued under this Chapter is a Class A civil infraction. The City may order any person occupying, using, excavating, or otherwise working in a City-administered right-of-way to cease and desist, to remove any obstruction, and to restore any disturbed surface to the Standards and Specifications. The City may remove any obstruction and do work as necessary to abate and/or mitigate any violation of this Chapter; the person responsible for the violation shall be responsible for the City's costs of abatement and mitigation in addition to any civil penalty or other legal remedy that may be imposed.

EXHIBIT B

Chapter 3.50 REVOCABLE RIGHT-OF-WAY AND CITY PROPERTY PERMITS

3.50.010 Permit Required for Use or Closure of Rights-of-Way or City Property

A. Except as otherwise authorized by this Code, no person other than the City may place any landscaping material, fill, rocks, goods, structures, or any other material in any right-of-way or City property, close or reserve for exclusive use any portion of any right-of-way or City property without a permit issued by the City. Permits issued under this section shall be revocable.

B. Landscaping within planter strips by the adjacent property owner or a homeowners association is exempt from the permit requirement of Subsection A. Landscaping within a planter strip shall comply with Chapter 3.60 Trees on City Property and Public Rights-of-Way, and applicable clear vision area requirements.

3.50.020 Permit Conditions

The City may include conditions in permits issued under this Chapter. The conditions shall clarify the actions allowed under the permit. Conditions may require compliance with this Code or other laws or regulations. Although permits shall list an expiration date, all permits issued under this Chapter are revocable and may be terminated by the City at any time on 30 days' notice.

Except as expressly provided to the contrary in a permit, the City may require any item placed in a right-of-way to be removed within 14 days of notice by the City. If the item is not removed, the City may remove the item and the permittee shall be responsible to reimburse the City for the cost of removal.

3.50.030 Fees

The applicant shall pay a fee in an amount set by Council resolution to cover the costs of permit processing and administration, including inspection and oversight. In addition, if the permit authorizes ongoing use of rights-of-way or City property, the City may collect an additional amount not to exceed fair market rental value for the duration any area is occupied by the permittee. The City shall require payment of the fair market rental value if the permittee uses the area for commercial purposes.

3.50.040 Liability and Indemnity

Permittees are liable for personal injury or property damage arising from the items they place in rights-of-way. If the City is required to pay damages for personal injury or property damage relating to items placed in rights-of-way under a permit issued under this Chapter, the permittee shall compensate the City for the full amount of the damages paid and the City's legal fees.

